

Date : 2/2/2023 6:21:06 AM
From : "Paul Dulberg"
To : "Law Office Of Alphonse Talarico"
BCc : "Paul Dulberg" , "Tom Kost"
Subject : Re: 17LA377

Okay I hit the AI on our other issue and it's amazing that the AI can see through this in a few questions but Judge Berg couldn't.

I gave you the whole conversation below but number 9 is where the relevant answer is:

1.)

Me: what is vicarious liability

AI Response: Vicarious liability is a legal doctrine where an employer can be held responsible for the actions or omissions of its employees that occur within the scope of their employment. This means that an employer can be held liable for the harm caused by its employees even if the employer did not directly participate in or have knowledge of the harm-causing behavior. The purpose of vicarious liability is to ensure that individuals who are harmed by others have a means of recourse and compensation.

2.)

Me: does a cause of action have standing if the cause of action only names the employer and not the employee that caused the harm

AI Response:

Whether a cause of action has standing (i.e. is legally sufficient) depends on the jurisdiction and the specific facts of the case. Generally, in cases where the employer is being held vicariously liable for the actions of an employee, both the employer and the employee may be named as defendants. However, in some instances, it may be possible for a cause of action to have standing if it only names the employer and not the employee. This may be the case if the employer has insurance covering the employee's actions, or if the employee cannot be located or is insolvent. In such cases, naming only the employer may provide the most efficient means of obtaining compensation for the harm suffered. However, it is always advisable to consult a lawyer familiar with the specific laws and facts of a case to determine whether a cause of action has standing.

3.)

Me: in a vicarious liability case can the employer be found liable even if the employee is not

AI Response: Yes, in some circumstances, an employer can be found vicariously liable even if the employee who caused the harm is not liable or is not named as a defendant. The key factor in determining whether an employer can be held vicariously liable is whether the harm was caused by an employee in the course of their employment. If the harm was caused by an employee in the course of their employment, the employer may be held vicariously liable even if the employee is not personally liable or is not named as a defendant. This is because the purpose of vicarious liability is to provide a means of recourse for individuals who are harmed by others, and to hold

the employer responsible for the actions of its employees. However, the specific laws and circumstances of each case may impact whether an employer can be held vicariously liable, so it is always advisable to consult a lawyer familiar with the facts of the case.

4.)

Me: is it a good idea to file suit against the employee and leave the employer out

AI Response: Whether it is a good idea to file a lawsuit against an employee and leave out the employer will depend on the specific facts of the case and the jurisdiction. If the employee caused harm in the course of their employment and the employer is vicariously liable, then the employer may be a necessary party to the lawsuit in order to obtain full compensation for the harm suffered. On the other hand, if the employee has limited assets or is insolvent, it may be more practical to only sue the employer, who may have insurance covering the harm caused by the employee.

It is important to consult a lawyer familiar with the specific laws and facts of the case to determine the best course of action. The lawyer can help to assess the potential liabilities and assets of both the employee and the employer, and advise on the most efficient means of obtaining compensation for the harm suffered.

5.)

Me: is there any circumstance that it would be beneficial to the plaintiff to let the employer out of the case and only go after the employee

AI Response: There may be circumstances where it would be beneficial for a plaintiff to let the employer out of a case and only go after the employee. This can happen in situations where the employee has a significant personal financial ability to pay a judgment, but the employer has limited financial resources or insurance coverage. For example, in a small business setting, the owner/employee may have personal assets that can be seized to satisfy a judgment, while the business may not have the funds or insurance to cover the harm caused by the employee.

Another circumstance may be where the employee had acted outside the scope of their employment, in which case the employer may not be vicariously liable. In such a case, the only available defendant may be the employee.

However, these are general guidelines and the specific laws and circumstances of each case will impact the decision on whether to name both the employee and the employer, or only the employee, as defendants in a lawsuit. Therefore, it is always advisable to consult a lawyer familiar with the specific laws and facts of the case to determine the best course of action.

6.)

Me: what if the plaintiff's attorney misinforms the plaintiff as to the status of the employee and gives the plaintiff an ultimatum to let the employer out of the case

AI Response: If a plaintiff's attorney misinforms the plaintiff about the status of the employee and gives the plaintiff an ultimatum to let the employer out of the case, the plaintiff may have a potential legal claim against the attorney for professional negligence. An attorney has a duty to

provide their client with accurate and complete information and to act in their best interests. If the attorney misleads the plaintiff or fails to fully inform the plaintiff of all their legal options, the attorney may be in breach of this duty and may be liable for professional negligence.

In such a case, the plaintiff may choose to pursue a legal claim against the attorney for damages suffered as a result of the attorney's conduct. However, it is always advisable to consult a lawyer familiar with the specific laws and facts of the case to determine the best course of action. The lawyer can provide guidance on the potential merits of a claim and help the plaintiff to determine whether to pursue a claim against the attorney or take some other course of action.

7.)

Me: in a professional negligence case against the attorney can the plaintiff determine the pecuniary loss from releasing the employer before the employee is found liable

AI Response: In a professional negligence case against an attorney, it may be possible for the plaintiff to determine the pecuniary loss from releasing the employer before the employee is found liable, but this will depend on the specific facts and circumstances of the case. The pecuniary loss refers to the financial harm suffered by the plaintiff as a result of the attorney's conduct.

To determine the pecuniary loss, the plaintiff must show that they would have recovered more money if the attorney had acted correctly. This may involve showing that the employer had insurance or other assets that could have been recovered if they had been named as a defendant, or that the employee had personal assets that could have been seized to satisfy a judgment. The plaintiff may also need to show that the employee was likely to be found liable for the harm caused.

Determining the pecuniary loss in a professional negligence case can be complex and may require expert testimony or other evidence. It is always advisable to consult a lawyer familiar with the specific laws and facts of the case to determine the best course of action. The lawyer can help to assess the potential liabilities and assets of both the employee and the employer, and advise on the most efficient means of obtaining compensation for the harm suffered.

8.)

Me: how would you determine the pecuniary loss from releasing the employer before the case settles against the employee and no award has been issued yet

AI Response: Determining the pecuniary loss from releasing the employer before the case settles against the employee and no award has been issued yet can be challenging. The pecuniary loss refers to the financial harm suffered by the plaintiff as a result of the attorney's conduct. To determine the pecuniary loss in this situation, the plaintiff may need to consider various factors, such as:

1. The financial resources of the employer and employee: The plaintiff may need to consider the financial resources of both the employer and employee to assess the likelihood of recovery from each. For example, if the employer has limited assets or

insurance coverage, but the employee has substantial personal assets, the plaintiff may be better off pursuing a claim against the employee rather than the employer.

2. The likelihood of recovery from the employee: The plaintiff may need to consider the likelihood of successfully pursuing a claim against the employee and the potential size of any award. If the employee is likely to be found liable and has the financial resources to pay a significant award, the plaintiff may be better off pursuing a claim against the employee instead of the employer.
3. The costs and risks of pursuing a claim against the employee: The plaintiff must also consider the costs and risks of pursuing a claim against the employee, including the potential for a long and costly legal battle and the likelihood of recovery.

It is important to note that determining the pecuniary loss in this situation can be complex and may require expert testimony or other evidence. It is always advisable to consult a lawyer familiar with the specific laws and facts of the case to determine the best course of action. The lawyer can help to assess the potential liabilities and assets of both the employee and the employer, and advise on the most efficient means of obtaining compensation for the harm suffered.

9.)

Me: regenerate the above response only this time take into account that the attorney has not pulled either the employers or employees insurance policy nor performed an asset check

Determining the pecuniary loss from releasing the employer before the case settles against the employee and no award has been issued yet can be even more challenging if the attorney has not pulled either the employer's or employee's insurance policy nor performed an asset check. In this situation, the plaintiff may need to consider various factors, such as:

1. The financial resources of the employer and employee: Without information on the financial resources of both the employer and employee, it can be difficult to assess the likelihood of recovery from each.
2. The likelihood of recovery from the employee: Without information on the employee's financial resources and likelihood of being found liable, it can be difficult to assess the potential size of any award from the employee.
3. The costs and risks of pursuing a claim against the employee: The plaintiff must also consider the costs and risks of pursuing a claim against the employee, including the potential for a long and costly legal battle and the likelihood of recovery.

It is important to note that in this situation, it may be more difficult if not impossible for the plaintiff to determine the pecuniary loss and make an informed decision about the best course of action. It is always advisable to consult a lawyer familiar with the specific laws and facts of the case to determine the best course of action. The lawyer can help to assess the potential liabilities and assets of both the employee and the employer and advise on the most efficient means of obtaining compensation for the harm suffered.

On Feb 1, 2023, at 12:19 PM, Paul Dulberg <Paul_Dulberg@comcast.net> wrote:

Dear Mr Talarico,

I have ordered up the transcript of todays hearing so I am going to try and refrain from quoting the parties and or Judge until the transcript is made available.

Per todays decision by Judge Berg to Grant Summary Judgement based on what I call a clown's logic:

You have permission to seek whatever remedy is necessary to get this decision reversed.

Examples; Motions to deny a Flynn's future motion to dismiss with prejudice, Motions to reconsider, appeals to the Appellate Court/Supreme Court, and/or dropping the Bomb on all of the previous Judges decisions and his lack of self recusal from the case.

I am fighting this Judges decision because it is not based on the facts and is in effect a ruling based on a misperception of the facts, current case law, and a clear misunderstanding or complete disregard to when damages are discoverable for a vicariously liable defendant released from a case before their agent is found liable. We did not use the term vicariously liable today but if I understood the Judge correctly he did do his homework and completely disregarded the nature of the underlying complaint against the McGuires for both their inactions and the resulting actions of their agent.

Please advise as to when we can start working on the appeal.

You also have permission to hire whatever consultants and or services are needed to aid you in this legal challenge.

I am angry about todays decision but it is tempered partly because I expected a bad decision today and I also know this Judge does not get the final say in this matter.

We are fully funded for this fight all the way to the supreme court and beyond.

Please advise on a proper course of action to have this clearly illogical decision challenged and lets get to writing and filing the necessary paperwork.

Paul